HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 740 of 2007.
Reserved on: 29.10.2007.
Decided on: 8.11.2007.

Veena Thakur ..... Petitioner.

Versus

State of H.P. and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the petitioner: Ms.Kiran Lata Sharma, Advocate.

For the respondents: Mr.M.S Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J:

This judgment shall dispose of the present writ petition filed by the petitioner under Articles 226 and 227 of the Constitution of India for quashing of the order passed by the learned State Administrative Tribunal on 27.4.2007.

Briefly stated the facts of the case are that the petitioner, who was serving as TGT (Arts) in Government High School Zamanabad, District Kangra, H.P., was transferred to Government Middle School Katholi, vide order dated 4.11.2003. The petitioner challenged the said transfer order since she was transferred after about 1 year and 11 months only, which was short period and

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

was against the transfer policy. She challenged her transfer order by filing an OA before the State Administrative Tribunal which directed the respondents to treat her OA as representation and to decide the same within a period of four weeks of hearing the petitioner as well as respondent No.4. Till then, the operation of the transfer order was to remain stayed. Respondent No.4 rejected the representation of the petitioner and ordered her to join the duties as per the transfer order dated 4.11.2003. The petitioner filed another OA No.163/2004 on 15.1.2004 before the learned Tribunal which passed an interim order of status quo on 16.1.2004.

The petitioner was on medical leave and on 17.1.2004, she submitted her joining report to respondent No.3 with the medical fitness alongwith status quo order passed by the learned Tribunal. Respondent No.3 refused to accept the joining report of the petitioner due to the reason that she already stood relieved on 12.1.2004 and was further directed to report for duties to Deputy Director (Education), Dharamshala, for appropriate action. The petitioner, on 19.1.2004, filed a miscellaneous application before the learned Tribunal against the refusal of the joining report submitted by her to respondent No.3. The Tribunal directed the respondents to produce all the relevant record including the relieving order of the petitioner. The respondents sought time to file reply as well as to produce the relevant record and the order of status quo was maintained for further dates. After taking reply from the respondents, finally the learned Tribunal passed an order on 2.6.2004 holding that the order passed by the State Government was proved to be mala fide and the respondents were directed to retain the petitioner at Government High School Zamanabad, District Kangra.

It was further averred by the petitioner that she was not paid the salary during the pendency of the OA under status quo order by the respondents and she applied for the release of salary from January, 2004 to May, 2004 and the respondents directed the petitioner to send them the application for leave. Thereafter the petitioner filed another OA before the learned Tribunal, who after hearing both the parties directed the petitioner to apply for leave of kind due during the period the petitioner remained absent. Being aggrieved by the said order passed by the Tribunal on 27.4.2007, the petitioner has filed the present writ petition challenging the said order and for quashing the same.

Notice of the petition was issued to respondents who filed reply. We have heard the learned counsel for the parties and have gone through the record of the case.

The facts of the case are clear that the petitioner challenged her transfer order dated 4.11.2003 and also challenged the rejection of her representation dated 1.1.2004. The learned Tribunal heard the matter and the order of status quo was passed by the learned Tribunal on 16.1.2004. The said order has not been placed on record about which a reference has been made by the learned Tribunal in its order dated April 27, 2007, which is under challenge. A perusal of this order shows that the order of status quo was passed by the learned Tribunal on 16.1.2004 and from 10.1.2004 to 16.1.2004, the petitioner was on medical leave. She submitted her joining report with medical fitness on 17.1.2004 alongwith the order of status quo passed by the learned Tribunal, but respondent No.3 refused to accept the joining report of the petitioner due to the reason that she had been relieved on 12.1.2004, which relieving order can be said to have been passed in absentia since she was on medical leave during the last one week. The order of status quo means that the order shall be maintained

as it exists today meaning thereby that the petitioner was entitled to continue at Government High School Zamanabad in case she had not been relieved from there. Once she had been relieved from there in absentia before the order of status quo was passed by the learned Tribunal, she had no right to claim that her joining report was liable to be accepted. The best course open to the petitioner was either to approach the Deputy Director (Education) alongwith the order of status quo for appropriate directions, as was directed by respondent No.3, or since her OA challenging the transfer order had not been decided so far, she could have approached the learned Tribunal for seeking appropriate orders. However, once she stood already relieved rightly or wrongly in absentia, she was not liable to submit her joining report at the place of posting from where she already stood relieved i.e. Government High Court Zamanabad. However, the petitioner neither reported for duties to the Deputy Director (Education) at Dharamshala for seeking directions, nor she filed any application before the learned Tribunal seeking clarification. She chose to remain at her place of residence and never reported either at the place of her posting or sought clarification, as mentioned above. Therefore, from that date till the date of her joining at old place of posting i.e. at Zamanabad after the decision of her OA, she can be deemed to be absent from duty for this period from January, 2004 to May, 2004.

The learned Tribunal was approached by filing another OA for seeking directions for release of her salary for these four months for which she neither worked at her previous place of posting nor at her new place of posting and as such once she had not worked during these four months, the learned Tribunal held that she was not entitled to any pay.

In so far as the interpretation of the word status quo is concerned, we are clearly of the view that once she stood already relieved from her duties, she should have reported either at her new place of posting or sought directions from her immediate superior or should have approached the learned Tribunal for seeking clarification, but she had no right to remain at her residence and enjoy without doing any work and, therefore, she was not entitled to the pay for this period.

Coming to the question as to the effect of order of status quo how it is to be interpreted since here main original application was still pending before the learned Tribunal, which was decided subsequently vide order dated June 2, 2004, in which it was clearly held by the learned Tribunal that her transfer was mala fide to accommodate respondent No.4 and the respondents were directed to retain the petitioner at Government High Court Zamanabad. Once her earlier transfer order was set aside and after this date she was again entitled to submit her joining report at her old place of posting i.e. at Zamanabad which was done by her, but in so far as the pay for the previous period is concerned during which she remained absent, it was rightly held by the learned Tribunal that she should apply for the leave of kind due which shall be considered by the respondent in accordance with law.

To substantiate her case for the grant of pay, the petitioner had relied upon the following decisions:

The decision in **Chandra Bhushan Singh v. State of Bihar and others, 2005(4) SLR 414** shows that withholding of salary in case of order of transfer challenged by an employee. Authorities changed his place of posting. Employee could not join at transferred post. He would be entitled for salary for

interregnum period. Withholding of salary without any reason was held to be improper.

The decision in **Manchaiah v. Director of Medical Education, SLJ 1984(1), 128,** shows that the petitioner transferred from one Directorate to another but the petitioner did not join there but challenged by filing writ. Transfer order was quashed. It was held that the petitioner was entitled to salary and allowances of the interim period.

Both these decisions can be said to be based upon the facts of the case and are not applicable to the present facts. The apex court had clearly laid down that the normal rule of 'no work no pay' applies, which was referred to by the Punjab and Haryana High Court in another case titled **Krishan Kumar v. Haryana State Fed. of Consumers' Coop Wholesale Stores Ltd., 1997(3) SLR, 803.** It was observed that the normal rule of 'no work no pay' is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This decision was also based upon the facts of that case.

The facts of the present case are different since the petitioner was informed that she stood already relieved from her present place of posting, therefore, she should have reported either at her new place of posting or sought directions, as mentioned above, but she had no business to remain at home and claim subsequently that she was not permitted to join her place of posting.

Applying the principle of 'no work no pay', the learned Tribunal had passed a reasonable order which does not suffer from any illegality and calls for no interference by this Court and as such there is no merit in the present writ petition, which is dismissed accordingly.

CMP No.1276 of 2007:

In view of the dismissal of the main petition, this application also stands dismissed.

(Deepak Gupta), J.

(V.K. Ahuja), J.

November 8, 2007. (TILAK)